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July 31, 1997

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

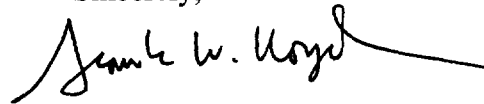
Re: **Closed Captioning**  
**Ex Parte: MM Docket No. 95-176**

Dear Mr. Caton:

The undersigned, representing Rainbow Media Holdings, Inc., met this morning with Cable Services Bureau Chief Meredith Jones and delivered to her a copy of the enclosed proposals for flexibility in the closed captioning of library programming, new cable networks, and regional cable news programming. Copies of the enclosed were also provided by hand to all other Commission personnel listed on the memorandum.

Please include this memorandum in the public record of this docket.

Sincerely,



Frank W. Lloyd

Enclosure

DCDOCS: 113503.1

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TO: Meredith Jones  
William Johnson  
Meryl Iove  
Marcia Glauberman  
JoAnn Lucanik  
Alexis Johns

July 31, 1997

Ex Parte Submission  
**By Hand Delivery**

cc: Gretchen Rubin  
Suzanne Toller  
Anita Wallgren  
Marsha MacBride

FROM: Frank W. Lloyd

RE: **Rainbow Media Holdings Inc. Position on Closed Captioning  
(MM Docket No. 95-176)**

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Rainbow Media Holdings, Inc. submits the enclosed proposals for flexibility in the closed captioning of library programming, new cable networks, and regional cable news programming.

Pursuant to the FCC's Rules, two copies will be submitted to the Secretary for inclusion in the public record of this docket.

# **RAINBOW MEDIA HOLDINGS, INC.**

## **Ex Parte Presentation In Closed Captioning Proceeding MM Docket No. 95-176**

### **THE FCC MUST PROVIDE FLEXIBILITY FOR THE CLOSED CAPTIONING OF LIBRARY PROGRAMMING, NEW CABLE NETWORKS AND REGIONAL CABLE NEWS PROGRAMMING**

- Rainbow Media Holdings, Inc., a pioneer of the niche programming concept for cable television, has created new programming services for unique audience interests that might otherwise go unserved such as fine arts, independent film, classic film, and music programming, as well as regional and local news and sports.
- Inflexible closed captioning restrictions may hamper programmers like Rainbow from bringing to the American public the best of arts and film programming through channels like BRAVO and American Movie Classics that rely primarily on previously produced “library” product.
- New start-up cable networks, which Rainbow regularly creates, should be exempted from closed captioning obligations for a sufficient time to allow them to achieve the financial viability to support captioning.
- Regional cable news channels, like Rainbow’s News 12 Long Island, News 12 Connecticut, News 12 Westchester, and News 12 New Jersey, should be allowed to satisfy the captioning requirement with electronic newsroom script captioning.

#### **LIBRARY PROGRAMMING.**

- Many cable networks, including four of Rainbow’s networks, rely heavily on previously produced video programming:
  - **BRAVO**, Rainbow’s cable service featuring the best of independent U.S. and international film, theater, dance, jazz and profiles on the arts, features approximately 20% original productions or co-productions, but 80% of its programming is previously produced from other sources.
  - **American Movie Classics**, the country’s first 24-hour programming network dedicated to the uncut presentation of Hollywood films, uses 90% film library programming.
  - While these two networks are long-established, library programming also provides the foundation for two of Rainbow’s newer cable networks. **The Independent Film**

**Channel**, a recently launched network dedicated to films made outside of the traditional Hollywood system by visionary filmmakers, consists of 95% library programming. Similarly, **Romance Classics**, a niche programming concept launched just this year, dedicated to romance entertainment targeted to women, uses approximately 85% library product. Neither network could easily assume the significant additional costs associated with closed captioning.

- Much library programming may not see the light of day if the cost of closed captioning is imposed upon the current cost of film or library acquisition, since the cost to caption new, prerecorded programming can in many cases can be incorporated into programming production budgets, while the cost to caption prerecorded library programming cannot.
- New programming can expect to have a long shelf life and exposure to a variety of distribution outlets, while library programming often lacks the ability to recapture closed captioning costs.
- Even programming that may have been captioned during its initial showing on television networks or in movie theaters requires reformatting for a basic cable network to show the program in captioned format.
- Congress specifically recognized the difficulty that imposing a mandatory closed captioning requirement would present on library programming, and stated that the captioning requirement should not “result in previously produced programming not being aired due to the cost of captions.”
- Lower cost library programming is often the economic foundation upon which many new programming services are based. But much of this programming, particularly library programming produced prior to the mid-1980s, has never been captioned. Captioning costs can make or break a new programming network.
- Popular, classic programs and movies that attract wide viewership and interest have been and will continue to be captioned over time without rigid percentages or timetables.

#### **PROPOSED FCC ACTIONS ON LIBRARY PROGRAMMING:**

- Rainbow urges the FCC to refrain from imposing rigid timetables or percentage phase-ins on library programming, and allow market forces to dictate the implementation of closed captioning.
- If the FCC were to impose a captioning requirement on library product, it should do so with a much lower percentage and longer deadline than for newly created product. It should also grandfather all contracts in existence on February 8, 1996, the date of enactment of the 1996 Telecommunications Act, to avoid disrupting any existing agreements for library material.

### NEW NETWORK PROGRAMMING.

- Cable programmers like Rainbow should not be impeded in their ability to create new, high quality, innovative national, regional and local programming services. Start-up networks that operate on limited budgets, such as Rainbow's **Extra Help Channel** and regional and local news channels, described below, may be incapable of tolerating the additional expenses that closed captioning would dictate.
- Start-up costs for a new cable network include substantial cost for investment in research, program acquisition, personnel, facilities, marketing and promotion. If mandatory captioning requirements are phased in too quickly on new cable networks the already high costs associated with starting up a new network might deter new entrants in the programming marketplace.
- Closed-captioning costs lessen the likelihood that a start-up network will survive long enough to become viable. Even for already established participants in the cable programming marketplace, it takes at least five years after launch, and often far longer, for a network to gain acceptance in the marketplace and reach the break even point on an annual basis. After that point, it will be many more years before a new network can attract sufficient advertising or subscriber revenues to recoup the initial investment in its service. Many new cable networks have folded within the first five years of launch due to the competitive nature of the video programming market, or never become profitable.
- Neither Rainbow's 24-hour regional news services, such as **News 12 Long Island** and **News 12 New Jersey**, nor its **Neighborhood News**, a hyper-local news service, could expect to turn a profit in less than five years.
- Closed captioning expenses could also have a paralyzing effect on the development of new programming services like Rainbow's **The Extra Help Channel**, which serves as a community learning center for people of all ages and provides specific assistance to school-age children through curriculum-based programming.
- Many new cable networks are inexperienced in the captioning area and lack relationships with established captioning agencies. Many cable networks lack sponsorship relationships with advertisers and have not been the recipients of government grants. Many start-up networks also lack in-house captioning staff or equipment.
- Most government funding that has enabled programmers to provide closed captioning has historically been directed to broadcast, rather than to cable, networks. New cable program networks need additional time to forge private partnerships and obtain sponsorships, if possible, to assist in their captioning efforts.

## **PROPOSED FCC ACTIONS ON NEW CABLE NETWORK PROGRAMMING**

- The FCC should exempt a start-up cable network from captioning requirements for at least five years from launch, and then allow it to phase-in the closed captioning of its programming over the same schedule the FCC adopts for more established networks.
- The FCC should totally exempt lower-penetrated nationally-distributed basic cable networks (those that reach less than 20 million subscribers) for the reasons stated in the comments of Rainbow and numerous other start-up cable networks in this proceeding.
- If the FCC attempts to develop a threshold based on revenues that a programmer would need to meet before it was subjected to closed-captioning requirements, it should do so with great care for the vast differences in cable networks and their highly varied economic structures.

### **REGIONAL NEWS PROGRAMMING**

News 12 Regional Networks produce four separate and distinct program services in the New York television market. Each one is a 24-hour per day news service that provides full television coverage to its own region.

News 12 Long Island services Nassau and Suffolk Counties, currently reaching 735,000 homes; News 12 Westchester services Westchester County, currently reaching 100,000 homes; News 12 Connecticut services Fairfield County, Connecticut and its environs, and currently reaches 200,000 homes; News 12 New Jersey services the 14 counties of northern and central New Jersey (all New Jersey counties in the New York ADI, plus Mercer County), and currently reaches 400,000 homes.

The four News 12 Networks currently are seen by approximately 425,000 households in the New York television market each day. They provide a service not available anywhere else to these households. At the median cost of \$660 per hour for live action closed captioning, as used in the FCC reports, closed captioning of this type would substantially increase the News 12 Regional Networks' average hourly programming budget.

### **PROPOSED FCC ACTION ON REGIONAL NEWS PROGRAMMING**

The use of "electronic newsroom" script captioning would cover the majority of all News 12 programming. Weather and traffic information is graphically shown on all News 12 Networks. Most News 12 special warnings to the public on breaking news are currently shown with a text crawl across the screen. The acceptance of this method of closed captioning, plus graphic representation, would accomplish the fundamental goals of live action closed captioning at a cost that would allow News 12 to continue to serve its unique purpose.